

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
BRIEF**

76-1059

In The
United States Court of Appeals
For The Second Circuit

THE UNITED STATES OF AMERICA,

Appellee.

vs.

FRANK CERELL,

Appellant.

*On Appeal From a Judgment Entered in the United States
District Court For the Southern District of New York (Owen, D.J.)*

**BRIEF IN BEHALF OF APPELLANT,
FRANK CERELL**

FRANK A. LOPEZ

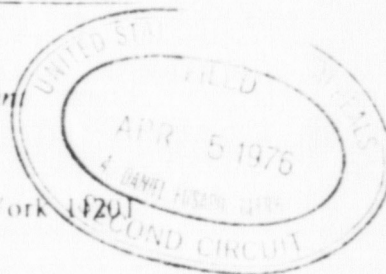
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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Appellee,

-against-

FRANK CERELL,

Appellant.
-----X

BRIEF FOR APPELLANT CERELL

PRELIMINARY STATEMENT

The defendant-appellant Frank Cerell,¹ appeals from the Judgment of conviction entered against him on February 6th, 1976, in the United States District Court for the Southern District of New York after a seven day trial by jury before the Honorable Richard Owen, District Judge, under Count 1 of the Indictment, for conspiracy to hijack and fence an Interstate shipment, and under Count 3 of the same indictment for receiving the stolen shipment.

Indictment 75 Cr. 1033 charging Cerell with violation of 18 U.S.C. §371, conspiracy, and 18 U.S.C. §659, with receiving stolen property was filed on October 25th, 1974, and thereafter

1. Hereinafter referred to as "Cerell".

superseded by Indictment 75 Cr. 979, filed on October 10th, 1975.

The superseding indictment amended the allegation alluding to the commencement of the alleged conspiracy from October 15th, 1971 to October 15th, 1972.

The trial of the superseding indictment (75 Cr. 979) commenced on December 10th, 1975, and concluded with verdicts of guilty against Cerell as to conspiracy (Count 1) and a substantive count of receiving stolen property from interstate shipment (Count 3).

Judgment against Cerell was pronounced February 6th, 1976, with the imposition of a sentence of one year and one day on Counts 1 and 3, to run concurrently. A timely notice of appeal was filed and bail of \$1,000. personal recognizance bond was continued without opposition pending the determination of this appeal.

STATEMENT OF THE CASE

1) The Government's Theory of the Case.

The Government sought to prove that on February 21st, 1973, a truck loaded mostly with clothing for interstate shipment was hijacked in Manhattan by five men. The truck was thereupon driven by the hijackers to the Long Island

home of Frank Cerell, who was waiting there together with Paul Viruet. Cerell and Viruet with the help of the hijackers unloaded the contents of the truck storing the goods within a wooden structure on Cerell's property. The truck emptied of its contents was thereafter driven by one of the hijackers to a street approximately 15 or 20 minutes away from the Cerell home where it was abandoned and recovered by the authorities two days later. It was the Government's contentions that the hijacker Crawford had discussed his plans with Cerell and Viruet who agreed to fence the load. The Government's case depended and hinged on the testimony of the hijackers.

2) Cerell's Theory of Defense.

Cerell maintained that he had an earlier acquaintance with Crawford but at no time did he ever agree with the hijackers and Viruet to fence the load taken from the hijacked truck on February 21st, 1973. Cerell claimed that no truck ever came to his home and unloaded of its contents. Moreover, Cerell corroborated his statements with testimony by his wife, mother and a neighbor, who while recalling the date of February 21st, 1973, did not see any truck arrive at the Cerell premises.

STATEMENT OF FACTS1] The Government's Case.

On February 20th, 1973, Theodore Smith worked as a truckdriver for Modern Trucking Company in Manhattan (28,29)*. The company engaged in interstate shipping (29). In the afternoon of February 20th, 1973, Smith and one or two others loaded his truck with cartons and packages for delivery in New Jersey the next day (33,34,44,45). The truck was loaded at 4:00-4:30. The shipment contained children's wear, bras-sieres, girdles, lamps, hats and other goods addressed to Tempo Foundations, Fairy Tale Children's Wear and other packing houses all located in New Jersey (30,34,134). After the loading was completed, the truck was locked and Smith left (60,61,84,86). There are more than one set of keys to the truck (61).

Smith arrived at the Modern Trucking Terminal before 6:00 A.M. on the morning of February 21st, 1973 (55,56). Shortly thereafter, he departed from the terminal in his truck, without examining the load, to proceed on his assigned route (60,62,88). He traveled along West 24th Street turning onto Ninth Avenue and stopped for a traffic light on Ninth

* References to the Appendix for Cerell will be cited in parentheses page number followed by letter "a". Thusly, (...a). References to the original record on appeal will be cited by page number in parentheses.

Avenue and West 23rd Street (34,62,63). At this point Carlton Boyd and Buster Eason suddenly entered the cab of the truck, one entering the driver's side, the other entering from the passenger side (35,119,129,401). With Smith between the hijackers, and being held at gunpoint, the truck was driven to West 22nd Street between Seventh and Eighth Avenues where it came to a halt near a waiting car (38,64,65,119,129,445). Smith was then transferred to the auto owned by Leon Rogers and occupied by Rogers and James Dixon (36,324,325). Smith was in back and Rogers and Dixon were in front (72). Smith was immediately driven through and around uptown Manhattan and the Bronx until approximately 8:00 A.M. whereupon he was released (36,73,75,82-3).

The President of Modern Trucking, Henry Hyman, arrived at his place of business on the morning of February 21, 1973, at 7:00 A.M. and was informed that the Smith truck departed from the terminal at about 6:35 A.M. (94,96,109,113-4). After Smith's release, he telephoned Hyman, who in turn, notified the authorities (39,73,75,82-3). The empty truck was located several days later on Broadway in Jericho, Long Island (97,98).

Beside Eason and Boyd, who actually commandeered the

truck, and Rogers and Dixon, who drove Smith in their vehicle through Manhattan and the Bronx, there was another co-conspirator named Chester Crawford who participated in the hijacking (118). Crawford testified that after he decided to hijack a truck, he had two or three discussions with Paul and Frank concerning the purchase of the truckload (122). These discussions took place in December of 1972 (124). He had another discussion with them in January of 1973, wherein they said that they would handle the load and would pay for it when they sell it (124). He called Paul the night before he got the load and then again right after he got the load (124,125).

After Smith was transferred from the truck to the car, Boyd and Eason drove the truck down Second Avenue and across the Williamsburg Bridge behind Crawford who was in his own car (119). After crossing the bridge, Crawford stopped his car at Havemeyer and Grant Streets in Brooklyn, informing Boyd and Eason to continue to the Long Island Expressway; that he was going to make a phone call and would catch up with them (119,231,232,234). After calling Paul, Crawford caught up with the truck on the Long Island Expressway near 68th Street then continued leading the truck until they

exited at South Oyster Bay Road (233,239,240).

According to Crawford, when he and the truck exited from the Expressway they continued to a diner at Old Country Road (240). At the diner he telephoned Frank Cerell, and Cerell and Viruet arrived at the diner in ten or fifteen minutes (241). They then followed Frank and Paul's car to Frank's house (133,134). The truck was backed into the driveway of Cerell's home at 33 Belmont Avenue, Plainview, where it was unloaded (134). It was unloaded by Crawford, Boyd, Eason, Paul and Frank (134). The contents of the truck were placed in and behind a small wooden house in the rear of the main house (134,136). Some of the contents, either opened or unopened were stored in the basement of the smaller house and some were placed in Crawford's truck (250-6,331-2,449,477, 480). Crawford stated there was a connecting passageway between the basement of the main house and the small wooden structure (136). After the unloading Boyd inquired about money; and a general discussion was held but no payment made (137,258,259-60,327-9).

Crawford drove Boyd and Eason back to New York after Boyd and Eason drove the unloaded truck to Jericho and abandoned it (138). Before reaching the Midtown Tunnel, Eason was

dropped off and Crawford and Boyd continued into Manhattan with Crawford taking Carlton Boyd to Manhattan Avenue and 121st Street (139). Crawford had called home and his wife informed him that Cerell had not telephoned (495,496).

According to Special Agents Martin A. Crowe and Steven Bursey, the Modern truck was recovered two days after the hijacking on February 23rd, 1973, on Broadway in Jericho, Long Island. It was further stated that in a reenactment of the hijacking, they drove a car from the point where the truck was seized to Cerell's house, a distance of 32.6 miles and that the elapsed time of the trip was 61 minutes. It also took 10 to 15 minutes to drive from Cerell's house to the site where the truck was found; a distance of 5 miles (362, 363, 379, 380, 386).

There were glaring inconsistencies and contradictions in the Government's case. It was Crawford's testimony that he called Frank's house from a diner and that after 10 or 15 minutes Frank and Paul arrived in a car, after which he and the truck followed them to Frank Cerell's house (133). In another portion of his direct testimony he stated that after the phone call Frankie (Cerell) met them and they took the truck to Frank's house where he saw Paul (Viruet) (120). At another point, he testified that he did not call

Frank on February 21st, and did not call anyone from the diner and then stated that he did call (241).

Eason testified that after the truck crossed the Williamsburg Bridge, Crawford stopped them (Eason and Boyd) and instructed them to continue and get off at Exit 61 (692,693, 709). He further stated that upon exiting at Exit 61, there was a red Vega waiting for them on the shoulder of the road who escorted them to Cerell's house. He said that Boyd had told him to look for the red Vega which would be waiting at the exit (694,710).

Boyd's testimony was in direct conflict with both Crawford and Eason. He stated that he drove off the Expressway at Exit 43. There was no car waiting for them. Crawford did not go into a diner. He was sure that Crawford had made a phone call from a gas station because he went with him (446, 469,470).

Crawford also stated that he had never dealt with Cerell before February 21st, but had called his home many times between October of 1972 and January of 1973, but later said he had not known Cerell in October of 1972. He met him for the first time in either November or December of 1972. Crawford said that he had further dealings with Cerell in March of

1973 concerning stolen securities (122, 124, 153, 181).

The testimony with regard to the subsequent payments for the hijacked shipment was even more contradictory and almost unintelligible. Crawford testified that on February 22nd, 1973, Cerell met him at Lefferts Boulevard and 101st Avenue in South Ozone Park and give him close to a thousand dollars which he gave to Boyd that evening to be split between Boyd, Dixon, Eason and Rogers. He met Boyd on 121st Street and Manhattan Avenue (140, 141, 142, 291). About three or four days later he received five or six hundred dollars more from Cerell which Crawford kept. This money was paid at Crawford's house (143, 269, 292). Crawford gave Viruet \$250. to bring to Dixon and Boyd (144, 335, 336). Dixon and Boyd told Crawford that they had received money from Viruet but did not disclose the amount (335, 336). In another portion of his testimony, Crawford states that the initial amount given by Cerell was \$600., \$700. or \$1,000. (267). He further stated that Frank gave him some more money only one other time but it was a small sum; about \$200. or \$300. (270). A statement was made by Crawford to Special Agents Thomas Lagator and Allen Garber that at some later date Frank gave Crawford an additional approximate amount of \$2,800. to divide among the participants of the hijacking (271, 294). He did not

recall any amount but the first thousand (294). That he told the agent that the total amount was \$3,800. (294). That he doesn't recall the total amount (295). He couldn't remember the amounts that were paid, how the payments were made or the total amount received for the load (296).

Dixon testified that Eason, Boyd and he received \$500. or \$600. apiece from Crawford on the initial payment (404, 405). It was paid at Manhattan Avenue and 121st Street (405). There was a second payment made. This payment was \$500. or \$600. made by Paul to himself, Eason and Boyd while they were sitting in a car at 125th Street just off Broadway. He never saw Paul again (405,406). Dixon believes he received a total of \$1,200. (404).

The Government attempted to corroborate the payment aspect of its case through Boyd, realizing the significant conflict which existed between the testimony of Crawford and Dixon.

But Instead, Boyd testified as follows: He stated that he received payment on two occasions. Crawford gave him the initial payment of \$1,450. at Sutphin and Linden Boulevards in Jamaica, and the second was made about one week later by Paul Viruet. The amount was \$900., which was to be divided

by Eason, Boyd and Rogers and took place at 125th Street and Amsterdam Avenue. He stated that Amsterdam Avenue is two blocks from Broadway (450,451,484,485,486,487).

The prosecution's theory of the conspiracy and involvement of Frank Cerelli was predicated solely upon the dubious testimony of Chester Crawford, James Dixon and Carlton Boyd. The testimony of this tarnished triumvirate was fraught with inconsistencies and flagrant contradiction. Statements were elicited which graphically depicted the depth of their involvement in criminal sub-culture of the city, as well as their total disregard of social mores, law and order, thus, demonstrating the complete unreliability of their testimony.

Chester Crawford, age 51, had been confined in the federal prison system for 31 months at the time he testified. He had been convicted after trial of Interstate theft and received a sentence of 10 years with a 3 year concurrent sentence. In a homicide charge involving a postal truck hijack he received a sentence of 12 1/2 years to run concurrent with the former sentence. He pleaded guilty in the United States District Court for the Eastern District of New York to possession of stolen merchandise receiving still another 3 year concurrent sentence. He is awaiting sentence in the District

of New Jersey on a conspiracy charge. He is an unindicted co-conspirator in the present case having been granted immunity for his testimony with the additional understanding that if he testified satisfactorily, the sentencing Judge in New Jersey would be informed of his cooperation (117,159, 160,161,162,163,189,190,191,285,286).

Carlton Boyd, age 36, and not to be outdone by his conniving colleague Crawford, is known to have committed at least four hijackings from May of 1972 to February of 1973. He had not been prosecuted in any of these hijackings, and has been given immunity in this case for his cooperation. At the time he testified, he was serving a five year prison term for hijacking. He had completed a 1 1/2 year prison term on another Interstate hijacking after his original sentence of 8 years was reduced by Judge Brieant. He has also been sentenced to 12 years after trial for armed robbery in Queens County. In 1968, he pleaded guilty to robbery of some furs in New York County and was sentenced to a term of 3 years. He has carried a firearm during several of the hijackings. He has testified against other people in other cases and plans to testify against other persons in the future, both in New York and New Jersey to gain favorable treatment and

Immunity (438-441,453-457,459,462).

James Dixon, age 37, demonstrated vividly that he was cut from the same mold as Crawford and Boyd. He had pleaded guilty to hijacking a truckload of meat on West 125th Street in Manhattan in October of 1973, received a prison term of 5 years and is presently on parole. He had previously been a numbers runner and/or bookmaker. He lied to the Probation Officer and lied before the Grand Jury and swore that it was the only hijacking in which he had ever been involved. It was later discovered that he participated in at least five. The Government, however, informed him that they would not prosecute him for any of those hijackings, and promised him immunity in this case for his cooperation and testimony against Viruet and Cerell (393,394,411,412,413,414,419,420).

2] Cerell's Defense.

Ann Cerell, the defendant's wife testified that she was never convicted of a crime (549). She and husband Frank have five children ranging in age from 11 to 18 years old. She awoke on February 21st, 1973, at 20 minutes to 7, as she does every morning by alarm, to prepare the children for school (549,550). She and Frank live in a four room section of the front portion of the house and Ann Cerell's mother-in-law lives in an attached two room wooden section behind the house (552,553). Mother-in-law Rose Cerell visits her every morning at about 8:00 A.M. or 8:15 A.M. for coffee and enters the main structure through a basement leading from inside her apartment to inside Ann's house with the stairway coming from the basement into the foyer (560).

On February 21st, 1973, two of the children left for school at 7:15 A.M. The next two left at 8:30 A.M. The last one left at 9:15 A.M. This was the normal routine (551). Cerell's mother came in for coffee on the morning of February 21st, 1973 (560). Ann Cerell stated that she passed through and used the connecting basement that day and saw no cartons or boxes or any items that did not belong to her (562). She testified that her husband Frank was continually in the house on February 21st,

1973, from 6:00 A.M. to 11:00 A.M. or 12:00 noon. Paul Viruet was not at her home at all that day (577). When the last child leaves at 9:15 A.M. she does her chores about the house (558,604).

She noticed no truck in the driveway, heard no noise, and saw no black men moving about near her house (557,558,578). Ann testified that she met Crawford twice, both times at her home before February 21st, 1973. The first time he came with his wife and two children (567). He discussed a house he was building and had conversation with Frank about the work to be done (569,570). Crawford was not in or around her home on February 21st, 1973 (557,578). She never saw Crawford again after those two occasions but he did telephone the house two or three times after February 21st, 1973. It was during the time that Frank was in the hospital (571). She stated that her husband had a severe accident in 1969, injuring his back. He has been under medical treatment ever since and is being supported by Nassau County and by taking on simple odd jobs (564, 565, 566, 572, 573). Cerell had a heart attack on March 17th, 1973, and was hospitalized until about April 23, 1973 (562,563). He had another attack in May and another in September of 1973 (563,564).

Roseanne Anderson, a neighbor of the Cerell's residing

at 31 Belmont Avenue, testified that her dining room windows face the Cerell driveway and that she was home on February 21st, 1973 (611). She did not see any truck in or around Cerell's house (613).

Rose Cerell, Frank's mother, testified that she was at home on February 21st, 1973. She arose at about 7:00 or 7:30 A.M. She went to her daughter-in-law's house at about 7:30 A.M. walking through the basement. She went back to her own apartment at a quarter to nine. She saw no trucks; there were no cartons or boxes that she did not recognize in her apartment or in the basement and that there were no men in or around their property on that date. Rose Cerell knew Paul Viruet but did not see him on February 21st, 1973 (618,619, 620,621,622).

Frank Cerell testified that he met Crawford in late 1972 (628). He stated that Crawford was untruthful when he testified that he had never been to Frank's house prior to February 21st, 1973. The first time he came to Cerell's house was approximately in October of 1972. He came with a woman named Maria and two children (639,640). Chester knew that Frank had been in the construction line and that since he was building a house he wanted Frank to find out the best material prices and perhaps

to find some men in the trade to do some of the construction work for him (641). Crawford had come to Frank's house on another occasion before February 21st, 1973, asking him to get a roofer or a carpenter. Cerell also had gone to Crawford's house two or three times before February 21st, 1973 (643). He further testified that he did not meet any of the other hijackers at any time; that he never even saw the Modern Trucking Company truck no less help to unload it; that no truck went into his driveway and that nothing was stored in his house or the little house attached to the rear of his house (645,646,647). He never had a conversation with Crawford about any purported hijacking and did not receive a phone call on February 21st, 1973, from him (647,648). Cerell has never been convicted of a crime (628).

POINT IADMISSION OF "SIMILAR CONDUCT
EVIDENCE" WAS HIGHLY PREJUDICIAL,
MANDATING REVERSAL.

The Government's case was based exclusively on the testimony of three of the hijackers. Serious questions were raised as to their conflicting stories and the reliability of the testimony of hijackers Crawford, Boyd and Dixon. The Government in order to bolster its case, was permitted to introduce into evidence that hijacker Crawford received from Cerell and Viruet certified blank checks stolen from the First National City Bank to purchase cigarettes in March, 1973, which never materialized because of Crawford's April, 1973, arrest. This was post-similar act evidence to the hijacking which was the subject matter of the indictment.

In addition, a series of at least four pre-hijacking "similar act" incidents were elicited by the Government in its case against Viruet going back to 1965. As Cerell was joined in the conspiracy count, this evidence collaterally affected him.

The Government's theory of eliciting this evidence was to show a common plan or scheme. The prosecution relies on United States v. Papadakis, 510 F.2d 287, 294 (2nd Cir. 1975), cert. denied, 421 U.S. 950 (1975):

"we are by now firmly wedded to the in-
 clusory form of the rule, that evidence
 of other crimes is admissible, if rele-
vant, except when offered solely to prove
 criminal character." (stress supplied)

See also, United States v. Torres, 519 F.2d 723, 727 (2nd Cir. 1975); United States v. Campanile, 516 F.2d 288, 292 (2nd Cir. 1975); United States v. Gerry, 515 F.2d 130, 140-141 (2nd Cir. 1975).

Cerell makes a two-prong attack on the "similar acts evidence." First, all the acts were not substantially relevant to the crime being tried, and secondly, the "certified checks" incident is not "pre" the hijacking but subsequent, and therefore, should not have been used by the Government. United States v. Johnson, 453 F.2d 1195 (5th Cir. 1972); United States v. Bussey, 432 F.2d 1330 (D.C. Cir. 1970). Moreover, there appears to be a dispute among the circuits as to when similar acts evidence may be used. This Circuit has the broader view although all the circuits agree that the evidence must be substantially relevant. United States v. Leonard, 524 F.2d 1076 (2nd Cir. 1975); United States v. Byrd, 352 F.2d 570 (2nd Cir. 1965). Here the real purpose of the Government's proof was to show criminal behavior and conduct on the part of both Cerell and Viruet.

POINT IITHE GOVERNMENT FAILED TO ESTABLISH A CONSPIRACY OF THE HIJACKING OF FEBRUARY 21st, 1973.

While no requisite formal agreement is necessary to constitute an unlawful conspiracy it may nonetheless be inferred from the circumstances of the case. Glasser v. United States, 315 U.S. 60 (1942). The objective of the specific conspiracy must be clear. The agreement struck between Cerell and Crawford was for the fencing of men's suits. The shipment ultimately charged was for a completely different inventory (children's clothes, hats, etc.). The Government here proved another and distinct conspiracy. The concept of an overall conspiracy as against one specific conspiracy has been recognized by the courts. Kotteakos v. United States, 328 U.S. 750 (1946).

Here it was required at least on the conspiracy count that Cerell knew and understood the objectives of his unlawful agreement. At most he bargained for stolen men's suits. He agreed later to "receive" something else. Certainly, this new agreement cannot be the basis or substantiation for conviction of another conspiracy. The knowledge and objective of the agreement must be proved. United States v. Alsondo, 486 F.2d 1339 (2nd Cir. 1973); United States v. Spock, 416

F.2d 165 (1st Cir. 1969).

In United States v. Papa, ____ F.2d ____ (2nd Cir. Dec. April 2nd, 1976). This Court found the existence of two separate conspiracies and, therefore, the Government not incumbered by a double jeopardy question in the Eastern District of New York when its prosecution was brought in the Southern District of New York, despite the fact that the objectives, witnesses, the time-element, and several of the conspirators were the same.

POINT III

SCIENTER OF THE INTERSTATE NATURE
OF THE ITEMS STOLEN ON THE PART
OF THE FENCE OR RECEIVER IS NECES-
SARY TO ESTABLISH A VIOLATION OF
18 U.S.C. § 659.

It is clear that Cerell and Viruet did not participate in the hijacking. Crawford, Boyd and Dixon were three of five hijackers who testified for the Government and admitted fully to their participation in the theft of the Modern Trucking shipment. The jury was instructed by the Court that it was unnecessary for the Government to prove that Cerell and Viruet had knowledge of the interstate nature of the shipment. The jury after several hours of deliberations was unclear and the Court recharged them (887,895-896,919-920).

No exception was taken to the Court's main charge. On the supplemental instruction the jury was advised that to convict on the conspiracy count it was unnecessary for the Government to establish knowledge of the interstate nature of the shipment (929-933).

The evidence in the case need not establish that the accused actually knew the goods mentioned in the indictment constituted a part of an interstate shipment, only that they were stolen. Clark v. United States, 213 F.2d 63 (5th Cir. 1954), United States v. Mir'eri, 303 F.2d 550, 554 (2nd Cir. 1961), United States v. Spatuzza, 331 F.2d 214, 216 (7th Cir. 1964).

The argument made by Cerell is that once the hijackers had succeeded in their plan to hijack the interstate shipment the journey had been interrupted and for all practical purposes the goods had come to rest. In addition, the proof at trial never demonstrated that Cerell knew of the interstate nature of the theft. His position is quite different from the hijackers to whom knowledge is imputed until the shipment is deemed to arrive at destination or is delivered. United States v. Werner, 160 F.2d 438, 442 (2nd Cir. 1947).

· POINT IV

APPELLANT CERELL JOINS IN CO-
APPELLANT VIRUET'S POINTS ON
APPEAL AS MAY BE APPLICABLE TO
HIM.

CONCLUSION

The judgment below as to Cerell should be reversed and
the indictment dismissed or a new trial ordered, together
with such other and different relief as may be just and proper.

Respectfully submitted,

FRANK A. LOPEZ
Attorney for Appellant

LEONARD FUSFIELD
Of Counsel
April 5th, 1976

A 202 Affidavit of Personal Service of Papers
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

LUTZ APPELLATE PRINTERS, INC.

UNITED STATES OF AMERICA,
Appellee,

- against -

FRANK CERELL,
Appellant.

Index No.

Affidavit of Personal Service

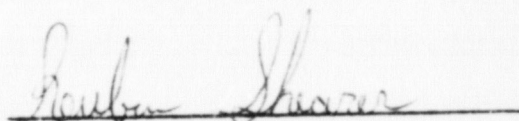
STATE OF NEW YORK, COUNTY OF NEW YORK ss.:

I, Reuben A. Shearer being duly sworn,
depone and say that deponent is not a party to the action, is over 18 years of age and resides at
211 West 144th Street, New York, New York 10030
That on the 5th day of April 1976 at One St. Andrews Plaza, New York
deponent served the annexed ~~Appendix~~ Brief upon

Robert B. Fiske Jr.,
the Attorney in this action by delivering ² true copy thereof to said individual
personally. Deponent knew the person so served to be the person mentioned and described in said
papers as the herein.

Sworn to before me, this 5th
day of April 19 76

Robert T. Brin
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977


Reuben Shearer